



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1520

MARVIN MORRIS WANGRUD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Petitioner, MARVIN MORRIS WUNGRUD,
respectfully prays that a Writ of Certi-
orari issue to review the judgment and
opinion of the United States Court of
Appeals for the Ninth Circuit filed in
this proceeding on April 1, 1976.

OPINION BELOW

The opinion of the Court below is not yet reported, and appears as Appendix "A" herein.

No written opinion was rendered by the United States District Court for the Central District of California.

JURISDICTION

The judgment and opinion of the Court below was filed on April 1, 1976, affirming Petitioner's conviction in the United States District Court for the Central District of California in two counts for violations of 26 U.S.C. §7203, willful failure to make income tax returns.

This Petition for Certiorari was filed within thirty (30) days, and this Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Petitioner seeks review of these questions:

1. The Trial Court failed to properly

2.

instruct the jury on the meaning of the word "willful".

2. The Court erroneously instructed the jury that Defendant had received income in 1971 and 1972 sufficient to require the filing of a tax return.

STATEMENT OF FACTS

On March 19, 1975, Petitioner was indicted in two counts for violations of 26 U.S.C. §7203, willful failure to make income tax returns for the years 1971 and 1972, two misdemeanors (Cl.Tr. pp. 1-2).

Petitioner pleaded not guilty, and was tried by jury (Cl.Tr. pp. 4-6).

The jury found him guilty as charged of both counts, and the court sentenced Petitioner as follows: One year in prison on each count, to run consecutively, and on condition he serve 30 days in jail on each count (for a total of 60 days), the remainder of the sentence was suspended and Petitioner placed on probation for 3 years. Petitioner was further ordered to obey all tax laws of the United States (Cl.Tr. pp. 7 & 17).

3.

The evidence presented at trial is summarized as follows:

An employee of State Farm Mutual Automobile Insurance Co. testified that in the year 1971, Petitioner earned a gross income of \$25,184.21, and \$26,580.49 in the year 1972 (Rptr.Tr. pp. 12, 13, 18, and 19). He testified that this alleged income was paid by checks, and that a "check" was an order to a bank to pay money to the payee. Although the checks in the instant case were endorsed by Petitioner, the employee did not know what Petitioner received for the checks. In particular, he could not say whether or not Petitioner received any Money (Rptr. Tr. pp. 22-23).

The manager of the bank where Petitioner had an account in 1971 and 1972 testified that deposits were made to Petitioner's account, and that checks were written on the account. The bank's records showed that Petitioner's account was credited when the State Farm checks were deposited. However, the bank did not maintain a separate place where Money was held for Petitioner. The bank

simply made a bookkeeping entry representing the credit (Rptr.Tr. pp. 35-36). The records showed Petitioner drew checks on this account, but the manager had no knowledge as to what Petitioner received for these checks (Rptr.Tr. p. 37). However, the manager did testify that if Petitioner cashed any check, he could only have received "Federal Reserve Notes" (Rptr.Tr. p. 37). In 1971 to 1972, there were no silver dollars in circulation (Rptr.Tr. p. 39).

The manager also testified that in the event Petitioner had used a check to purchase goods, the check would have been deposited in the merchant's bank account, and credits and debits would have been passed on the books of both banks--with no Money changing hands (Rptr.Tr. p. 40).

In the years prior to 1971 and 1972, Petitioner filed 1040 tax returns and paid some taxes. For the years 1971 and 1972, however, the returns showed no income (Rptr.Tr. pp. 47, 48, 52, 54, 57 & 62).

A special agent of the Internal Revenue Service, interviewed Petitioner

regarding the 1971 and 1972 "protest" type tax returns which had been filed. Petitioner said he was protesting violations of the Constitution and the destruction of the country (Rptr.Tr. pp. 64, 66).

In defense, Petitioner testified that until April of 1972, he had regularly filed tax returns. He signed and filed returns for the years 1971 and 1972 which did not show income and which explained in detail his protest against the tax laws and monetary system (Rptr.Tr. pp. 93-95, 106). Petitioner did not show the so-called Money he received from State Farm on his 1971 and 1972 tax returns because the State Farm checks were only orders to pay dollars, and he was not able to obtain dollars for these checks. He believed that he therefore received no Money. Since the tax law requires receipt of \$750.00 before being required to file a return and pay tax, he believed he was not required to file or pay. He received only legal tender notes for debt. After depositing the checks in his bank, he received a receipt showing he was a creditor of the bank. He wrote checks

against the credit, which essentially amounted to giving legal tender for the debt to someone else. When he drew on the credit, he received Federal Reserve Notes which were not Money, but simply a promise to pay Money (Rptr.Tr. pp. 107-111). He never received what he believed the law required that he receive as a dollar under the Coinage Act of 1792 (Rptr.Tr. p. 111). Mr. Wangrud tried to get Money for his notes and was unable to do so (Rptr.Tr. pp. 114-115). Petitioner sincerely believed that he was not legally required to file anything more than he did for the tax years 1971 and 1972 (Rptr. Tr. p. 117). By giving someone a Federal Reserve Note, Petitioner believed he was giving the person nothing of value; he was simply putting the person into debt (Rptr.Tr. pp. 123-124).

The defense requested an instruction that a Federal Reserve Note was not lawful Money of the United States. The request was refused (Rptr.Tr. p. 142).

The Court instructed the jury on two points significant to the case:

1. "[T]hat Federal Reserve Notes--in other words, the bills that you carry around in your billfold and one of which was produced by the Defendant as an exhibit here--are legal tender for debts, public and private, public charges, taxes, duties and dues." (Rptr.Tr. p. 166).
After stating that an element of the offense was proof that Petitioner received income of more than \$2,800.00, the Court said: "I would think you would have little trouble with that, because by his own testimony he received checks totalling much more than \$2,800.00." (Rptr.Tr. p. 167).
This instruction was objected to (Rptr.Tr. p. 179).
2. The Court, although it was requested to and did agree to do so, did not instruct that a person could not violate this law if he had a "good

faith misunderstanding of the requirements of the law."
(Rptr.Tr. pp. 144, 179).

In addition, the Court gave these instructions:

3. That the issue in the case was, "What did the Defendant believe Congress meant when it said, 'Anyone who receives as income \$750.00..' What type of dollars, what type of income did Congress mean?" (Rptr.Tr. p. 170). The Court stated that Defendant "must have realized that if Congress did not mean for him to file a tax return, by the same token, Congress did not mean for anyone else to file a tax return, and you will have to consider whether the Defendant believed that Congress intended that nobody who received income of the nature that he received that everyone else of whom he was aware was not intended to file an income tax return." (Rptr.

Tr. pp. 170-171).

4. "In failing to file an income tax return showing his income at the required time, did the Defendant know that it was the intention of Congress that he should under those circumstances file a return? If you believe that he in good faith was of the opinion that Congress did not intend that he who received income of the nature that he did was obliged to file a return, then the government hasn't proved its case; but, if you find beyond a reasonable doubt that under all the circumstances this Defendant knew, when Congress created that statute, it intended to and did say that a person who received income of the nature that Mr. Wangrud got was obliged to file an income tax return, then the government has proved its burden." (Rptr.Tr. p. 171). "The issue is, as I say and as I

said before, what was the intent as to the meaning, of the statute?" (Rptr.Tr. p. 172).

The defense objected to the gist of this instruction before it was given (Rptr.Tr. pp. 153-154).

ARGUMENT

I

ALTHOUGH THE TRIAL COURT AGREED TO DO SO, IT FAILED TO CORRECTLY INSTRUCT THE JURY THAT WILLFULNESS WOULD NOT EXIST IF PETITIONER HAD A GOOD FAITH MISUNDERSTANDING OF THE REQUIREMENTS OF THE LAW

In pre-instruction conference, the defense asked that the Trial Court fully instruct on the issue of willfulness essentially in the form as set out in footnote one of United States v. Klee (9th Cir. 1974) 494 F.2d 394, 395.^{1/} The Court unequivocally agreed to do so:

1/ In pertinent part: "...the defendant's conduct is not willful if you find that he failed to file a return because of...reckless disregard for the requirements of the law, or due to his good faith misunderstanding of the requirements of the law." (494 F.2d 394, 395) (Emphasis added)

"THE COURT: ...Due to his good faith misunderstanding of the requirements of the law--that is, in his No. 5, and I am going to amplify that. I am going to do a better job on that than Judge Thompson did, but I think that is the real issue. I am going to tell them that if he honestly felt that under the statute, when it said 'dollars' it did not mean legal tender or it meant only dollars as according to his definition, why, then, he is not guilty." (Rprr.Tr. p. 144).

The Court further confirmed this position by rejecting the government's request that the Court instruct that Federal Reserve Notes are lawful money of the United States (Rprr.Tr. pp. 146-147).

However, when instructions were given to the jury, the Court nowhere gave the essence of the instruction in United States v. Klee, nor the essence of a "good faith misunderstanding of the requirements of the law" portion, nor the

essence of what the Court said it would instruct in pre-instruction conference.

In fact, the Court's instructions went on to the matter of Petitioner's belief as to the intent of Congress. The Court skipped the instruction that Petitioner should be acquitted if he had a good faith misunderstanding of the requirements of the law as to the meaning of income in the Internal Revenue Code, and instead, proceeded to argue why he could not have had any misunderstanding (Rprr.Tr. pp. 170-172).

The defense objected to the Court's failure to give the agreed-upon willfulness instruction, and objected to the Court's instruction on Petitioner's views (Rprr.Tr. pp. 153-154, 179).

Although presented on appeal, the Court of Appeals, in its opinion neglected to address this issue entirely.

The problem is that the Trial Court's instructions did not include a proper instruction on willfulness, and furthermore, improperly characterized Petitioner's position and beliefs. This position was

not that the law was unconstitutional, but rather that Petitioner believed the law required one to receive income before having to file a return, and that he did not in fact receive income as required by law.

Whether or not the jury or Court might believe that Mr. Wangrud held such a view of the law in good faith was not the point. The point was that Mr. Wangrud was entitled to have the jury consider the matter of his understanding of the law by being given a proper instruction on willfulness.

In United States v. Rosenfield (3rd Cir. 1972) 496 F.2d 598, the Defendant was charged with failure to file tax returns, a misdemeanor. The Court held that the charge (essentially the same as requested in the instant case) was proper, to wit: "Defendant's conduct is not willful if he acted through inadvertence or mistake, or due to his good faith misunderstanding of the requirements of the law...."

In United States v. Bishop (1973) 412 U.S. 346, 360-361, the Supreme Court

reversed the former rule that the definition of willfulness in the misdemeanor sections was different from the felony sections, particularly in regard to proof of bad faith or evil intent. The Court held that the same proof or standard of willfulness is required in misdemeanor and felony cases, and that the requirement is not met, "If a taxpayer has relied in good faith on a prior decision of this Court."^{2/}

In United States v. Snider (4th Cir. 1974) 502 F.2d 645, the Court reversed the conviction on other grounds, and thereby avoided full resolution of the issue as to whether the trial Court's failure to give a willfulness instruction was error. However, before avoiding the matter, the Court cited Bishop, and said: "...It is possible that purpose and motivation may be found by a jury to negate willfulness..." (502 F.2d 657).

And, then, in United States v. Klee, supra, the Ninth Circuit held that the

^{2/} See extensive discussion of willfulness before the Bishop decision, 22 A.L.R.3d 1173.

trial Court's instruction, part of which is set out in footnote one above, and which instruction was specifically requested herein, "is in substantial compliance with the Bishop Court's requirement."

There is no question that Petitioner's willfulness was clearly placed in issue before the jury as the essential defense in the case. The entire testimony of Mr. Wangrud centered upon his beliefs that Federal Reserve Notes, though legal tender, were not Money, and that he believed that unless he received Money he was not required to file a return.

If the law's requirements were genuinely not understood by Petitioner in this respect, regardless of whether those views, if held by everyone, would mean that no one would have to pay taxes, then the jury would have to find that an element of the case, that Petitioner willfully failed to file a tax return, was missing. It is possible, as the Court argued in final instructions, that Petitioner's beliefs may well have been

ingenuine.^{3/} However, this was a question of fact for the jury.

Petitioner placed his intent into issue, and he was entitled to a complete and fair instruction on the issue of his willfulness. The Court's instructions were completely in error.

II

PETITIONER RECEIVED NO INCOME IN 1971 AND 1972 AND WAS, THEREFORE, NOT A PERSON REQUIRED TO FILE TAX RETURNS

The trial Judge said: "I concur ... that Mr. Wangrud is sincere in his beliefs. I don't doubt it at all." What were these beliefs? Though simple, those beliefs painfully hit at the very foundation of our monetary system.

Mr. Wangrud asks us to tell him: "What is Money?".

Is "Money" Federal Reserve NOTES that

^{3/} Although, at sentencing, the Court said, "I don't doubt his sincerity, but the things he advocates are extremely dangerous..." (Rprr.Tr. p. 193, --See also p. 187).

say right on their face: "THIS NOTE IS LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE"?

Is "Money" checks from State Farm Mutual Automobile Insurance Co. that say "pay to the order of Marvin Morris Wungrud"?

Of course these are not Money, and were never intended by law to be Money.

We are so tied up in our system of debt, that we have fallen into the habit of coming to accept all these things as the equivalent of Money. But they are not Money!

When the Constitution of the United States gave Congress the power to "coin Money", Money with a capital M, it did not mean that Congress could create a private banking system known as the Federal Reserve Banks, authorize those banks to issue notes, and then suddenly make those notes the same as Money. A Federal Reserve Note is "legal tender" for debts, (31 U.S.C. §392), and not Money.

There is, in fact, no Money now in

circulation in the United States. This is undisputed in the testimony in this case, and is also a fact subject to judicial notice. Judge Gray correctly refused to instruct the jury that these Federal Reserve Notes are Money. He correctly said that they were "legal tender".

In the extreme emergency of the Civil War, Congress created Treasury Notes to help finance the War, and made them legal tender. Almost immediately a case went to the seven-man Supreme Court. In Hepburn v. Griswald, 8 Wall. 607, the Court held that the "Legal Tender Acts" were unconstitutional. However, on the day of the decision, President Grant appointed two new justices to the Supreme Court under an act of Congress increasing the Court to nine. The Legal Tender question came back to the Court, which then, in Knox v. Lee, 12 Wall. 457, held that the "Legal Tender Acts" were constitutional.

However, it is very important to note that throughout the opinion the concept of ultimate return to specie and ultimate

redeemability of the legal tender was assumed. For example:

"No one supposes that these government certificates are never to be paid--that the day of specie payments is never to return. And it matters not what form they are issued. The principle is still the same. Instead of certificates, they may be Treasury Notes, or paper of any other form. And their payment may not be made directly in coin, but they may be first convertible into government bonds, or other government securities. Through whatever changes they pass, their ultimate destiny is to be paid." (12 Wall. 561 to 562, their emphasis; see also 552, 553, 560).

Once the "Legal Tender Acts" had been held constitutional, the premises of that constitutionality (redeemability in specie) began, slowly, to vanish from awareness, and, ultimately, and gradually, it came to pass that the specie vanished, and finally in 1968, the paper which once

was redeemable, no longer was.

What is "legal tender"? It means that if someone gives such a note to you to satisfy his debt, and you refuse to accept the same, then the debt is "legally" discharged by the tender of the note. But this is not Money. By allowing these notes to become "legal tender", and abolishing redemption, Congress has abolished Money.

The Internal Revenue Code requires the filing of a return by every individual who, in a taxable year, has a "gross income" of \$750.00 or more (or \$2,800.00 combined with a spouse), shown in terms of a "\$" sign (26 U.S.C. §§ 6012-6013).

"Gross Income" is defined in 26 U.S.C. §61, and includes "compensation for services, including fees, commission and similar items," and "income from discharge of indebtedness".

No one here contends that State Farm paid Mr. Wangrud in a form other than promises to pay, such as cattle, gold, grain or other things of value. Nor was there any proof presented that Mr.

Wangrud received \$2,800.00 worth of clothing or other goods. The proof clearly is that he was paid by promises to pay Money. The question is whether those promises meet the definition of "gross income" which would require the filing of a return. Mr. Wangrud clearly believed that they do not since he could never receive the Money itself.

The receipt of a note by a cash basis tax payer is not the receipt of income. See, for example, Cowden v. C.I.R. (1961) 289 F.2d 20, 24.

Mr. Wangrud believes that when the Internal Revenue Code says he must receive "\$2,800.00" before being obligated to file a return, the law requires him to receive dollars, Money, not notes (or promises to pay Money).

He says he earned more than \$2,800.00, but he never received it, as required by law. The evidence in this case is undisputed: Mr. Wangrud received numerous promises to pay him Money, but never got the real thing. In fact, he could not get anything but notes.

To answer Mr. Wangrud by asserting that he may buy clothing and food with these notes, is not an answer to the difficult question which he poses, nor does it remove the possibility that these beliefs were held in good faith.

He has provided us with an answer as to what is Money. It is what Money has always been in America: Gold and silver coin under the Coinage Act of 1792 (Second Congress).

CONCLUSION

In the instant case, we are faced with a Defendant who conscientiously holds views, in good faith, which, if true, would remove him from having to pay taxes. If held in good faith, he could not have willfully violated the criminal law, even if the beliefs were "dangerous."^{4/}

^{4/} The beliefs are not as dangerous as the trial Judge may have wished to think. The government could easily resort to its civil remedy to collect taxes that are due. In such a proceeding, the question of intent would be irrelevant.

Since the government chose to prosecute Petitioner for the crime of failing to file a return, it was bound to prove that he did so willfully. This being the case, it is beyond question that the law required acquittal if the act was done in a good faith misunderstanding of the requirements of the law. At a minimum, the Petitioner was entitled to be judged upon a full and fair instruction to the jury on the government's burden of proof in this respect.

It is respectfully submitted that the judgment should be reversed and a new trial granted based upon correct instructions of law.

Respectfully submitted,
DAVID M. ROTHMAN
Attorney for Petitioner

APPENDIX A

FILED

Apr 1 1976

EMIL E. MELFI, JR.
Clerk, U.S. Court
of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	
Plaintiff-Appellee,)	
vs.)	No. 75-3347
MARVIN MORRIS WANGRUD,)	
Defendant-Appellant.)	<u>OPINION</u>

Appeal from the United States
District Court for the Central
District of California

Before: WRIGHT, CHOY and KENNEDY,
Circuit Judges.

PER CURIAM:

Mr. Wangrud appeals his conviction on two counts of wilful failure to make an income tax return. 26 U.S.C. § 7203. For the tax years in question the defendant received checks from the State Farm Insurance Company as compensation for his services. He now argues that he did not

A-1.

receive money, since the checks could be cashed only for federal reserve notes and that these are not redeemable in specie. We publish this opinion solely to make it clear that this argument has absolutely no merit. We affirm this conviction.

By statute it is established that federal reserve notes, on an equal basis with other coins and currencies of the United States, shall be legal tender for all debts, public and private, including taxes. 31 U.S.C.A. § 392 (Supp. 1976). This statute is well within the constitutional authority of Congress. U.S. Const. art. I, § 8. It so completely disposes of appellant's argument that it is unnecessary for us to invoke other provisions of the Internal Revenue Code which would be equally dispositive, defining as income compensation received in forms other than money. See Internal Revenue Code of 1954, § 61.

We have considered appellant's other argument and we find it to be without merit.

The conviction is affirmed.



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